INVESTIGATIVE SUMMARY

Investigative Summary

Incident: Deputy Involved Hit Shooting.
LASD Report: 015-13249-1321-013
IAB File: SH 2382110

Opening Statement

On Monday, July 6, 2015, Internal Affairs Bureau investigators responded to an incident command post, established by Lakewood Station personnel. Sergeant Trent Denison, Sergeant Terisa River and Lieutenant David Flores were briefed regarding the circumstances of a Deputy Involved Shooting in which the suspect was deceased. Sergeant Denison was assigned the responsibility for the administrative review of the incident.

Synopsis

Deputies [redacted] Anthony Johnson, Robert Solorio, and Michael Bitolas shot Suspect John Berry after he struck Deputy Grant Oberle with his vehicle, pinning Deputy Oberle's legs between two cars.

On July 6, 2015, Lakewood Station received a call from [redacted] Suspect John Berry's [redacted] requesting a deputy to respond because Suspect Berry was schizophrenic, delusional, and off his medication. Information was given that Suspect Berry was sitting in his car on the front lawn of the family home at [redacted] Adenmoor Avenue in Lakewood.

Deputies Johnson, Bitolas, and [redacted] met at the intersection of Michelson Street and Adenmoor Avenue, one block south of the location and formed a plan prior to responding to the location together. While responding, the call was updated with information the suspect was off his medication, seated in his vehicle, and the [redacted] was attempting to get him out of the car because of Suspect Berry's erratic behavior. Also, information was given that Suspect Berry would flee once he saw deputies.

As the deputies drove north on Adenmoor Avenue, they saw Suspect Berry's vehicle parked facing southeast on the front lawn at the location. There were several people standing around communicating with Suspect Berry who was seated in the driver's seat.

As Deputy Johnson drove his patrol vehicle up to the west side of the street, Suspect Berry looked in his direction then accelerated his car off the grass, across the sidewalk, then off the curb and into the street toward Deputy Johnson's patrol car. Deputy Johnson swerved to the east to avoid colliding with Suspect Berry, and stopped in the middle of Adenmoor Avenue facing north. Deputy [redacted] who was behind Deputy Johnson, was already coming to a stop near the west curb at [redacted] one house south of the location. Suspect Berry drove in a southwest direction and collided

with the front of Deputy [redacted] car at between five and ten miles per hour. Suspect Berry's front bumper was up against the front grill of Deputy [redacted] vehicle and the driver's side of Suspect Berry's car was next to the driver's side door of Deputy Johnson's vehicle, preventing Deputy Johnson from opening his door. Deputy Johnson drove forward in order to open his door and exit. Suspect Berry continued to rev his engine as it remained in bumper to bumper contact with Deputy [redacted] patrol car, pushing [redacted] car backward several feet.

Deputies Johnson, Bitolas and [redacted] ran to the driver's side of Suspect Berry's car and ordered him out of his car. They attempted to remove Suspect Berry from the vehicle by pulling on his left arm. Suspect Berry slapped the deputies' hands away as they tried to grab hold of him. Deputy [redacted] climbed over the front grill of his patrol car to reach the passenger side of Suspect Berry's car. Deputy [redacted] heard Suspect Berry say, "Fuck you, I'm not going." Suspect Berry kicked at the deputies with his left foot while still seated in the driver's seat. Deputy Solorio arrived shortly after, and Deputy Oberle arrived at the driver's side of Suspect Berry's car. Deputy Bitolas sprayed Suspect Berry with pepper spray but it had no effect other than making Suspect Berry more resistive. Suspect Berry shook his face and kicked at the deputies harder. Deputy Bitolas grabbed Suspect Berry's left arm at which time Deputy Johnson placed one handcuff on Suspect Berry's left wrist. Suspect Berry's right hand still firmly gripped the steering wheel. Deputy Johnson attempted to hold onto Suspect Berry's left hand via the handcuff, but lost his grip at least twice. Suspect Berry kicked Deputies Bitolas and Johnson. Deputy Solorio tased Suspect Berry with no effect. Deputy Johnson also tased Suspect Berry, but it too had no effect, and Deputy Johnson was shocked by the TASER while attempting to grab onto Suspect Berry to pull him from the car. Deputy Johnson requested assistance, and a field sergeant, via his hand held radio. Sergeant Jobling arrived seconds later. During the incident, deputies ordered Suspect Berry to get out of his vehicle numerous times but he ignored their commands.

Deputy [redacted] got into the front passenger seat of Suspect Berry's car and attempted to shut the engine off by pulling on the key fob. He did not realize the car was equipped with a push button ignition and he was unable to turn it off. Deputy [redacted] told Suspect Berry to let go of the steering wheel. Deputy Solorio attempted to drive stun Suspect Berry with his TASER; however, as he did so, Suspect Berry grabbed the TASER, and/or Deputy Solorio lost hold of the TASER, and dropped it. Deputy Johnson struck Suspect Berry twice on the left leg/shin with his collapsible baton to stop him from kicking. Suspect Berry alternated between kicking the driver's side door, which was striking Deputies Johnson and Solorio on the legs, and kicking them directly. Deputy [redacted] used his flashlight to strike Suspect Berry's right hand once or twice in order to make him release his grip on the steering wheel. Suspect Berry continued to firmly hold the steering wheel. Deputy [redacted] saw Suspect Berry had control of a TASER and feared Berry would utilize it against them.

Deputy [redacted] struck Suspect Berry one or two times on the chin area with his flashlight (Metal Streamlight SL20) to gain control of Suspect Berry. Suspect Berry looked at him and said, "Is that all you got?" Deputy Oberle, who was standing between Suspect Berry's open driver's door and Deputy Johnson's patrol car a couple feet behind him, told Berry to stop fighting and get out of the car. At this point, Suspect Berry drove his car forward slightly, and the car rocked back and forth as Suspect Berry attempted to push Deputy [redacted] patrol car out of the way. Deputy Solorio, who was standing next to the driver's side front tire of Suspect Berry's car, yelled for Deputy Oberle to move because he feared Suspect Berry would move his car again. Deputy Bitolas, who was standing next to Deputy Oberle's right shoulder, jumped out of the way and moved to the rear of Deputy Johnson's patrol car. Suspect Berry put his car in reverse and accelerated. Deputy Oberle became trapped by the door and unable to get out of the way. As Suspect Berry reversed, his driver's side door struck the rear of Deputy Johnson's patrol car and hyperextended, folding the door between the two cars. Deputy Oberle tried lifting himself up between the two moving cars; however, Deputy Oberle's legs were crushed between Suspect Berry's car and Deputy Johnson's parked car. There was an audible sound of glass breaking and metal twisting/scraping as the two cars hit. Deputy Oberle attempted to lift himself up from between the two cars, by placing his hands, one on top of Deputy Johnson's car, and the other on the roof of Suspect Berry's car, as Suspect Berry accelerated in reverse. Deputy Oberle partially swung his legs upward to prevent his body from being crushed. Because of Suspect Berry's actions, Deputy Oberle's legs were pinned between the two cars, which twisted his body around. He fell to the ground on his back next to Deputy Johnson's car as Suspect Berry's car accelerated backward. Both of Deputy Oberle's legs were injured, and his hands were cut by broken glass on the ground.

The deputies believed Deputy Oberle was pinned between the two vehicles and was being dragged and crushed by Suspect Berry's car.

Deputy Johnson believed Deputy Oberle's leg was crushed and that he was about to be run over by Suspect Berry's car. Deputy Johnson feared Deputy Oberle was about to be killed, and believed his only option to stop Suspect Berry, was to fire his pistol at Suspect Berry. Deputy Johnson fired thirteen rounds.

Deputy Solorio believed Deputy Oberle's leg was crushed and that he was about to be run over by Suspect Berry's car. Deputy Solorio feared Deputy Oberle was about to be killed. He believed his only option to stop Suspect Berry, was to fire his pistol at Suspect Berry. Deputy Solorio fired four rounds.

Deputy [redacted] said he believed Deputy Oberle was being crushed by Suspect Berry's door which was hyperextending forward as Suspect Berry drove in reverse. Deputy [redacted] believed his only option to stop Suspect Berry from killing Deputy Oberle with his car, was to shoot Suspect Berry with his pistol. Deputy [redacted] fired nine rounds.

Deputy Bitolas saw Deputy Oberle being crushed between Suspect Berry's car and Deputy Johnson's car. Deputy Bitolas had already moved to the front area of Deputy Johnson's parked car and lost sight of Deputy Oberle when Suspect Berry was reversing. He feared Deputy Oberle was being dragged by Suspect Berry's car. Deputy Bitolas said shooting Suspect Berry was his only option to save Deputy Oberle and prevent Suspect Berry from backing further, then possibly driving forward into fellow deputies. Deputy Bitolas fired five rounds from his pistol.

Suspect Berry was struck multiple times by gunfire and died at the scene.

Homicide detectives responded and investigated the incident. For more information, see the Homicide Investigation Book, **Exhibit A**.

The involved personnel in this incident were found to have acted within the law by the Los Angeles County District Attorney's Office, and their case was closed. See the Letter of Opinion by the DA's office, **Exhibit B**.

Parts of the incident were captured on video by a neighbor across the street from the location. A copy of the video is included in **Exhibit C**.

<u>Involved Personnel</u>
Deputy [redacted]
Lakewood Station, South Patrol Division

<u>Work History</u>
Date of Employment: [redacted]
Date Assigned to Patrol:
[redacted]
Prior Shooting Incident(s):

Deputy Anthony Johnson [redacted]
Lakewood Station, South Patrol Division

<u>Work History</u>
Date of Employment: [redacted]
Date Assigned to Patrol:
Prior Shooting Incident(s):

Deputy Robert Solorio [redacted]
Lakewood Station, South Patrol Division

<u>Work History</u>
Date of Employment: [redacted]

Date Assigned to Patrol: [redacted]
Prior Shooting Incident(s):

Deputy Michael Bitolas [redacted]
Lakewood Station, South Patrol Division

Work History
Date of Employment: [redacted]
Date Assigned to Patrol:
Prior Shooting Incident(s):



Suspect

Berry, John Leonard, MW/29, DOB: 01-23-84, 6'01", 175lbs, Green eyes, Brown hair
[redacted]

Department Witnesses
Deputy Grant Oberle [redacted]
Deputy Sergio Santoyo [redacted]
Sergeant James Jobling [redacted]

Civilian Witnesses
Numerous civilians were identified and interviewed by Lakewood Station personnel, and Homicide Bureau investigators as possible witnesses. For more information regarding civilian witness interviews, see the Homicide Investigation Book, **Exhibit A,** pages, 21-26, 29-31,35, 48, 50, 53, 69-81, 86-173.

Injuries
Homicide investigators found Deputy Oberle sustained multiple contusions to his waist, legs, and cuts on his hands. He was transported to Long Beach Memorial Hospital where he was treated and released. Photographs of Deputy Oberle's injuries are included on the CD in **Exhibit D**.

Suspect Berry died of multiple gunshot wounds at the scene. The coroner's report is found on page 225 in the Homicide Investigation Book, **Exhibit A**. Autopsy photographs are included on the CD in **Exhibit E**.

Physical Evidence
All physical evidence was located and retrieved by Scientific Services Bureau technicians, and documented by them via supplemental reports and diagrams. For a description of the physical evidence, see the Homicide Investigation Book, **Exhibit A**, pages 193-224.

Investigator Observations
During the walkthrough of the scene, IAB investigators noticed numerous patrol cars parked on the street in front of the location. Investigators noticed Suspect Berry's black color BMW sedan was parked on the street next to the curb of his home. The driver's door of the BMW was hyperextended forward and heavily damaged. The driver's side of a patrol car near the BMW had scrapes and dents along the left front fender, doors, and rear quarter panel. There was a large amount of broken glass on the ground next to the damaged patrol car.

Suspect Berry was partially visible, slumped over in the driver's seat of his BMW.

Investigators noticed numerous expended shell casings, two TASERS, a police sap, and a black color flashlight scattered about on the street around the patrol cars and Suspect Berry's BMW.

Weapon used by Deputy [redacted]
Deputy [redacted] fired nine (9) rounds of Department issued 9mm ammunition from his Department issued Smith & Wesson M&P 9mm semiautomatic pistol.

Weapon used by Deputy Johnson
Deputy Johnson fired thirteen (13) rounds of Department issued 9mm ammunition from his Department issued Smith & Wesson M&P 9mm semiautomatic pistol.

Weapon used by Deputy Solorio
Deputy Solorio fired three (3) rounds of Department issued 9mm ammunition from his Department issued Smith & Wesson M&P semiautomatic pistol.

Weapon used by Deputy Bitolas
Deputy Bitolas fired five (5) rounds of Department issued 9mm ammunition from his Department issued Beretta 92F semiautomatic pistol.

Weapon used by Suspect Berry
2008 BMW 335i two door sedan, black in color, CA license plate [redacted] Suspect Berry was the registered owner of the BMW.

Property Damage
The patrol car assigned to Deputy Johnson received moderate collision damage along the driver's side where Suspect Berry's vehicle struck it.

Deputy [redacted] front bumper and push bar received minor scratches and was dented and the plastic cracked were Suspect Berry's bumper impacted it.

Suspect Berry's vehicle received numerous bullet holes to the windshield, hood, and interior. The driver's door and left front fender received major damage from hyperextension of the door when the vehicle struck Deputy Johnson's patrol car.

Pictures of the above described damage are included on the CD in **Exhibit D**.

Criminal Investigators
Homicide Detectives Robert Gray and Brandt House.

Lighting and Weather Conditions
The shooting occurred during daylight hours. The weather was hot and dry and the sky was clear.

Employee Interviews
The narratives which follow are intended only as a synopsis of the IAB interviews. Additional information and precise wording may be obtained by reviewing each deputy's recorded interviews and attached verbatim interview transcriptions from their Homicide interview and IAB interview. For points of reference and clarity, a crime scene diagram and scene photographs were utilized during each deputy's IAB interview to indicate the approximate positions of personnel, the suspect, and vehicles during the incident. The diagram and pictures used are attached at the end of each deputy's IAB interview transcription for reference.

IAB Interview of Witness Deputy Oberle
The force used by Deputy Oberle during this incident was resisted handcuffing.

Deputy Oberle said he was inside Lakewood Station when he heard a radio call for service regarding a mentally ill person sitting in a car parked in the driveway of the location. Information in the call included the person was schizophrenic, off his medication, and the informant was the suspect's [redacted] Deputy Oberle said he was not added to the call and did not respond immediately. He heard fellow deputies coordinate their response to the call and form a plan via the radio. Deputy Oberle said he added himself to the call and responded from the station, which was approximately one minute away from the location.

Deputy Oberle said he arrived on scene shortly after the initial units, and saw Suspect Berry's BMW sedan stopped on the street. He saw Suspect Berry seated in the driver's seat with one handcuff attached to his left wrist, and both front doors open. Deputies [redacted] and Johnson were standing at the passenger door of the BMW and Deputies Bitolas and Solorio were at the open driver's door. He heard a woman standing east of them say, "Stop beating him, let him go, he's not doing anything."

Deputy Oberle saw the deputies struggling to control Suspect Berry as Suspect Berry kicked Deputy Bitolas. Deputy Oberle withdrew his O/C spray; however, Deputy Solorio said they had already sprayed Suspect Berry and that it had no effect on him. Deputy Oberle told the deputies to take the keys out of the ignition and was informed they had already tried to but were unsuccessful. Deputy Oberle walked to the driver's side of the BMW and saw Deputy Solorio utilize a TASER on Suspect Berry through the

opening of the door and the windshield. He heard the TASER activating; however, Suspect Berry showed no response to it and continued to hold onto the steering wheel with his right hand.

Deputy Oberle saw Deputy Bitolas get kicked by Suspect Berry. He saw Deputy Bitolas strike Suspect Berry on the shin with either a baton or sap a couple of times. Deputy Oberle added that Bitolas' strikes were hard, and he heard the activation of the TASER; however, Suspect Berry showed no reaction and continued to struggle. Deputy Oberle took hold of the loose handcuff attached to Suspect Berry's left wrist and pulled it backward out of the door in order to control him. Suspect Berry continued to kick at Deputy Bitolas, and resist Deputy Oberle by pulling his handcuffed arm inward. Deputy Oberle heard the BMW's engine revving, but the car was not moving. The BMW was several feet away from the front bumper of a patrol car parked in front of it. Deputy Bitolas said he was the senior deputy at the location and believed it was up to him to give a plan of action to control Suspect Berry. He planned to have Deputy Bitolas pull Suspect Berry's leg at the same time he (Oberle) pulled on the loose handcuff, and he planned to pull Suspect Berry's hair so the two deputies could physically remove Suspect Berry from the car. As they were about to pull Suspect Berry from the car, Suspect Berry was able to drive his car forward several feet until it struck the front bumper of Deputy [redacted] patrol car. While the car was moving forward, Deputy Oberle kept his hold on the handcuff and walked with the car. He believed Suspect Berry was trying to use his car to push Deputy [redacted] patrol car out of the way because he was accelerating and both cars were lifting up and down, bumper to bumper. Deputy Oberle heard someone say to back off, and Deputy Bitolas moved around the open door and to the rear of Deputy Johnson's parked patrol car. Deputy Oberle released his grip of the handcuff and took a step away from the BMW in order to escape in the same direction Deputy Bitolas had gone. As he moved, Suspect Berry placed his car in reverse and backed up. Deputy Oberle realized the open door of the BMW was coming toward him, and he would not have time to get around it to safety before it hit him. His only avenue of escape was to jump over the roof of Deputy Johnson's patrol car. Deputy Oberle placed his right hand on Deputy Johnson's car, and his left hand on Suspect Berry's car, and lifted his legs up in an L-shape to keep them from being crushed between the two cars. He heard glass breaking and metal scraping as the BMW driver's door smashed against Deputy Johnson's car. Deputy Oberle saw his legs bouncing between the two cars and his left leg being twisted over the top of his right leg because of Suspect Berry backing the BMW.

Deputy Oberle believed he was about to see his legs broken. While his legs were being crushed by the cars, he heard gunshots, but he did not know how many, or which deputies were shooting. At the same time he was trying to lift himself up, the motion of Suspect Berry's car reversing caused his left hand to come off the BMW. He fell to the ground on his back as the car accelerated away. He fell flat on his back and cut his hands on broken glass from the BMW's door window, which was on the ground. He also injured his right elbow. He sat up and looked to see if his legs were still attached, or if he had suffered a compound fracture, or other kind of injury.

Deputy Oberle noticed the gunshots had stopped when he fell on the ground, and Suspect Berry's BMW had come to a stop approximately five feet in front of Deputy Johnson's car.

Deputy Oberle said he felt in shock about what had happened and realized if Suspect Berry accelerated forward, he would not be able to avoid being run over by Berry's BMW. He was pulled to his feet by Deputy Solorio and removed to the east side of Adenmoor Avenue. He saw Suspect Berry seated in his car, and the driver's door was hyperextended forward from impacting Deputy Johnson's car.

Deputy Oberle said he could not tell how many shots were fired, or who was shooting, because he was being crushed by the cars, and his body was in the air at the time. He had no further involvement in the incident, and was taken to the hospital by paramedics within minutes of the conclusion of the incident.

Homicide interview of Witness Deputy Santoyo

Deputy Santoyo told Homicide and IAB investigators he responded to the location when he heard units request a sergeant and additional units' assistance, regarding a mentally ill person. He was driving south on Adenmoor Avenue, and was two houses north of the location, when he heard a deputy yell, "Stop! Stop! Stop! Stop! Stop!" He then heard gunshots. He saw several parked patrol cars, and Suspect Berry's BMW bumper to bumper with a patrol car in the street. It appeared Suspect Berry's car was either moving backward or forward because the patrol car's front end lifted upward.

IAB Note: Deputy Santoyo indicated on the scene diagram, it was Deputy Johnson's patrol car that was jolted by Suspect Berry's BMW.

Deputy Santoyo exited his patrol car immediately during the gunshots, and the gunshots stopped as he got out. He did not know who was shooting. He ran eastward in a wide arc toward the deputies, to prevent himself from being in their line of fire. He noticed the deputies were firing through the windshield of Suspect Berry's car.

Deputy Santoyo said he heard Suspect Berry's motor revving and the driver's door was no longer there (hyperextended). Suspect Berry was in the driver's seat, and looked toward the deputies who were approximately eight feet away, he then saw Suspect Berry lean over toward the passenger seat. Deputy Santoyo heard the motor revving, and the car was moving as if it was still trying to reverse. He visually checked Suspect Berry to see if he was armed, then he checked on the deputies to see if they were okay. Deputy Santoyo said they needed to turn the BMW off in case it broke free and continued to move. Deputy Santoyo said he was unable to remove the keys, so he placed the transmission into park.

Deputy Santoyo said he did not see Deputy Oberle until afterward when he noticed him trying to catch his breath by a patrol car. He noticed Deputy Oberle's hands were cut and bleeding, his right arm was scraped with abrasions, and he had a mark on his left

pant leg. He asked Deputy Oberle if he was okay, but Deputy Obere did not respond. Deputy Santoyo heard a deputy request paramedics via the radio, and for units to contain the location. Deputy Santoyo did not use force, and had no other involvement in the incident.

IAB interview of Witness Sergeant Jobling

Sergeant James Jobling was interviewed by Homicide investigators on the date of this incident. Sergeant Jobling retired prior to the force review by IAB investigators, and was not available for a second interview at the time of this investigation.

Sergeant Jobling said he responded to the location regarding a call of a family disturbance and was approximately thirty seconds from arrival when deputies already on scene asked, via the radio, what his estimated time of arrival was. While driving up the street toward the location, he heard deputies request assistance, and advise they were involved in a fight with the suspect. Sergeant Jobling noticed Suspect Berry seated in the driver's seat of his BMW, which was parked on the street with its front bumper against the front bumper of a parked patrol car. He saw deputies standing at the open driver's door telling Suspect Berry to calm down, and to get out of the car. Sergeant Jobling also told Suspect Berry to calm down. He noticed Suspect Berry had already been tased prior to his (Jobling's) arrival. Sergeant Jobling walked to the passenger side of the BMW to attempt turning the car off. He said Deputy [redacted] reached in and attempted to turn the car off; however, he was unable to take the key out of the ignition. Sergeant Jobling was not familiar with the function of the BMW ignition, and believed the car had to be placed in park before the key would come out. He walked back to the driver's door area and directed a deputy to utilize the TASER again. He was not sure which deputy he gave the direction to. He said the TASER had minimal effect on Suspect Berry because Suspect Berry continued to resist and not follow commands. Sergeant Jobling said Suspect Berry revved his engine, and attempted to push the patrol car backward, but was unsuccessful in moving it. Sergeant Jobling said he directed another deputy to tase Suspect Berry, which the deputy did; however, Suspect Berry continued to attempt driving.

Sergeant Jobling saw a couple of deputies utilizing batons to strike Suspect Berry's leg, while Deputy Bitolas held onto the leg and pulled on it to remove Suspect Berry from the car. The baton strikes did not affect Suspect Berry, and Suspect Berry was able to place his car in reverse. Sergeant Jobling pulled Deputy Bitolas away from the BMW as Suspect Berry backed his car. Sergeant Jobling added, Deputy Oberle was in the area of the open driver's door of the BMW, and was not able to escape being crushed between the BMW and the parked patrol car that was next to it. He saw Deputy Oberle get crushed by the BMW's door as it hyperextended against the patrol car. He lost sight of Deputy Oberle when he, and Deputy Bitolas, moved around the patrol car and toward the front of it at the time Suspect Berry was reversing the BMW. The BMW struck a parked car that was a short distance behind it and stopped. Sergeant Jobling feared Suspect Berry was about to drive forward again and hit the deputies who were in front of the BMW. That is when he heard, and saw, Deputies Bitolas and Solorio shoot

Suspect Berry. He learned later that two other deputies also fired, but he was unaware of it at the time. Sergeant Jobling said Deputy Solorio fired through the suspect's windshield, and Deputy Bitolas, who was standing in front of Jobling, shot Suspect Berry through the open driver's door. He added, the shooting lasted less than five seconds, and he said, "Hey, that's it. Stop." The shooting stopped and they immediately set up a containment.

Sergeant Jobling said he witnessed Deputy Oberle get crushed by Suspect Berry's car, and believed had the deputies not shot, Suspect Berry would have put the car in drive and run them over.

IAB interview of Involved Deputy [redacted]

The force used by Deputy [redacted] during this incident was resisted handcuffing, one or two flashlight strikes to Suspect Berry's right hand, one or two flashlight strikes to Suspect Berry's jaw, and Deputy [redacted] fired nine times at Suspect Berry.

Deputy [redacted] told investigators he had come to a stop in the street, and was about to exit his car, when Suspect Berry drove his car off the front lawn and curb, then struck the front of his [redacted] patrol car, pushing it backward several feet. Deputy [redacted] believed Suspect Berry intentionally rammed his car, so he went to the driver's door to arrest Suspect Berry for assault. Deputy [redacted] along with Deputies Bitolas and Johnson, pulled on Suspect Berry's left arm to remove him from the vehicle since Suspect Berry would not obey orders to exit. Suspect Berry held onto the steering wheel with his right hand, and turned his body in the seat in order to kick the deputies. OC spray was introduced; however, it had no effect. Deputy [redacted] believed they would be able to stop the fight if they could get Suspect Berry out of his car. Suspect Berry continued revving his BMW's engine while trying to push Deputy [redacted] patrol car backward.

Deputy [redacted] entered the passenger side of Suspect Berry's car, and was unsuccessful in removing the car keys, or shutting the motor off. Deputy [redacted] could not get Suspect Berry to release his grip on the steering wheel so he struck Suspect Berry's hand once or twice with his flashlight, as hard as he could, on the knuckles. The strikes had no effect, as Suspect Berry continued to kick the deputies. He saw Suspect Berry was struck on the legs with a baton, and still Suspect Berry continued to kick. Deputy [redacted] heard the use of a TASER two times, and saw Suspect Berry take hold of a TASER. Deputy [redacted] feared Suspect Berry would use the TASER against them so he struck Suspect Berry on the chin/jaw area once or twice with his flashlight as hard as he could while confined in the front seat. Suspect Berry looked at him and said, "Is that all you got?"

Deputy [redacted] said Suspect Berry manipulated the gearshift and placed the car in reverse. Deputy [redacted] jumped out and yelled for his partners to get clear of the vehicle. He saw Suspect Berry quickly accelerate in reverse which caused Suspect Berry's BMW to strike Deputy Johnson's patrol car.

Deputy [redacted] saw Deputy Oberle could not get out of the way from his position at the open driver's door of Suspect Berry's car as it reversed. Deputy [redacted] heard, and saw, the two cars crushing metal, and glass breaking from the impact. He saw Deputy Oberle get crushed between the two cars and fall out of view. This caused Deputy [redacted] to believe Deputy Oberle had been run over and dragged under Suspect Berry's car.

Deputy [redacted] believed his only way of stopping Suspect Berry from killing Deputy Oberle, was to shoot Suspect Berry. Deputy [redacted] was standing ten to fifteen feet in front of Suspect Berry, and had a clear background when he fired. He shot in rapid fire sequence at Suspect Berry as Berry reversed backward away from him a short distance, then stop. Deputy [redacted] did not use any other force during this incident.

IAB Interview of Involved Deputy Johnson

The force used by Deputy Johnson during this incident was resisted handcuffing, OC spray, TASER once, one ASP Baton strike to Suspect Berry's shin and one baton strike to his knee, and he fired thirteen rounds with his pistol.

Deputy Johnson told investigators he was given the handle on a family disturbance call, with additional information that the disturbing party was mentally-ill. Deputy Johnson was inside the station when he heard Deputy Solorio initiate the coordination of the call, and had all responding units meet a short distance away so they could drive in together. Deputy Johnson advised he had a TASER with him. When he arrived a block away from the location, Deputies Bitolas and [redacted] were waiting. As they drove toward the location, Deputy Johnson saw Suspect Berry's car was parked on the front lawn, and Suspect Berry's [redacted] was standing next to it, and waiving at them. Deputy Johnson said he was first in the line of responding units, and coming to a stop in the street, when he saw Suspect Berry drive his car off the lawn and into the street.

Deputy Johnson said he swerved to the right to avoid a collision, and saw Suspect Berry drive between his car and the curb. He heard Suspect Berry's car collide head on with Deputy [redacted] patrol car at between five and ten miles per hour. Deputy [redacted] car was behind him and offset closer to the west curb of the street. Deputy Johnson said he was coming to a stop regarding the call for service, and did not try to block Suspect Berry's car with his car.

Deputy Johnson said Suspect Berry's car came to a stop bumper to bumper with Deputy [redacted] car, and Suspect Berry revved his engine in an attempt to push Deputy [redacted] car out of the way. Deputy Johnson's door was even with Suspect Berry's door, and he was unable to exit. He drove his car forward approximately five feet and got out of his car. Suspect Berry remained in his car, still revving his motor. Deputy [redacted] had already exited his car and was by the passenger door of Suspect Berry's BMW. Deputy Bitolas, who was third to arrive with them, was standing at the open driver's door and attempted to pull Suspect Berry from the driver's seat. Deputy Johnson stood on Deputy Bitolas' right side, and the two of them pulled on Suspect

Berry's shirt to get him out of the vehicle; however, Suspect Berry held onto his steering wheel and would not come out of the car. They ordered him to shut his car off and come out numerous times. Suspect Berry did not comply, and stated he knew his rights, and he told the deputies they had no right to do what they were doing.

Suspect Berry continued to rev his engine, and Deputy Johnson could see the tires were smoking as if Suspect Berry was attempting to push Deputy [redacted] patrol car out of the way. Suspect Berry pushed with his hands at the deputies when they tried to pull him out of the car, and he kicked Deputy Bitolas in the stomach with his left foot. The kick was hard enough to cause Deputy Bitolas to fall back a step. Deputy Johnson saw Suspect Berry kick Deputy Bitolas two to three times. Each time the kick caused Deputy Bitolas to move backward. Deputy Johnson said he withdrew his OC spray, and he believed he sprayed Suspect Berry. He believed Deputy Bitolas also sprayed Suspect Berry at the same time, so he was not sure if he (Johnson) had also sprayed, or if it was only Deputy Bitolas who did. Deputy Johnson said he smelled the spray, however, Suspect Berry showed no reaction, and continued kicking Deputy Bitolas. Deputy Johnson noticed Deputy [redacted] had entered Suspect Berry's car and was on the passenger seat. Deputy Johnson told Deputy [redacted] they could not pull Suspect Berry from the car because he was holding onto the steering wheel. He saw Deputy [redacted] strike Suspect Berry's knuckles a couple times with his flashlight; however, the strikes did not cause Suspect Berry to release his grip on the steering wheel. Deputy Bitolas pulled Suspect Berry's left arm straight, and Deputy Johnson was able to attach one handcuff to Suspect Berry's wrist. Deputy Johnson pulled on the loose cuff, but still was unable to pull Suspect Berry from the car. Suspect Berry kicked Deputy Johnson on the left knee area a few times. The kicks were hard enough to cause Deputy Johnson's foot to be pushed backward, and he let go of the handcuff. Deputy Johnson saw Deputy Solorio had arrived at the drivers' door, near the front tire.

Deputy Johnson said to tase Suspect Berry, and Johnson withdrew his own TASER. He saw Deputy Solorio tase Suspect Berry through the V of the door between the windshield frame and door. Suspect Berry showed no reaction to the TASER, and continued to kick. Deputy Johnson utilized his TASER and heard the TASER activate; however, his TASER also did not have the desired effect. Deputy Johnson realized that both TASERs had activated but had no effect, so he reached in the door to pull on Suspect Berry's shirt again to get him out of the car. As he reached in, Deputy Johnson touched the TASER leads and Deputy Johnson felt a shock from one of the TASERs, which caused him to drop his own TASER on the ground. He communicated to his partners that he had been shocked by the TASER.

Suspect Berry kicked Deputy Bitolas again, and Bitolas took hold of Suspect Berry's left leg as it extended outward. Deputy Johnson saw Deputy Bitolas had a grasp of Suspect Berry's left foot, so Deputy Johnson struck Berry on the shin with his expandable baton as hard as he could. Suspect Berry showed no reaction to the strike, so Deputy Johnson struck Suspect Berry on the left knee with his baton.

Suspect Berry said, "Ow, that actually hurt." Suspect Berry then pulled his leg away from Deputy Bitolas, back inside the car.

Deputy Johnson said he realized they had already utilized all the tools available to them which included OC spray, baton, TASER, and flashlight, yet Suspect Berry continued to fight with them, and continued revving his engine. Deputy [redacted] had tried to shut the motor off when Suspect Berry was kicking Deputy Bitolas, and said he was unable to turn the car off. Deputy Johnson ran around to the passenger side of the BMW and got inside after Deputy [redacted] exited. Deputy Johnson tried to turn the car off, but did not know how to operate the push button ignition, and was unsuccessful in turning the engine off. He said Deputy Oberle arrived at the driver's door and stood next to Deputy Bitolas. He heard Deputy Oberle tell Suspect Berry to get out of the car, and to stop what he was doing. Deputy Johnson was standing next to Deputy [redacted] on the grass next to the BMW when he saw Suspect Berry was able to place the car in reverse and back up. Deputy Bitolas had moved toward the front of the car, leaving Deputy Oberle standing at the open driver's door. As Suspect Berry accelerated, Deputy Oberle had no avenue of escape and became pinned between Suspect Berry's BMW and Deputy Johnson's parked patrol car. Deputy Johnson heard breaking glass and metal bending from Suspect Berry's driver's door hyperextending as it struck the rear of the patrol car. Deputy Oberle showed an expression of fear on his face as he was pinned between the two cars. Deputy Oberle had a hand on each car, and was trying to lift his body up at the time Suspect Berry's BMW was reversing. Deputy Johnson said Deputy Oberle had no way of escaping from between the two cars once Suspect Berry reversed.

Deputy Johnson feared Deputy Oberle was getting sucked under the moving car, and would possibly be run over by Suspect Berry. Deputy Johnson said he had no other option than to shoot Suspect Berry to prevent him from backing up further and killing Deputy Oberle. Deputy Johnson said he was standing in front of Suspect Berry's car when he fired at Suspect Berry's torso. He believed he fired six rapid shots, but later discovered he had fired thirteen. Suspect Berry's BMW reversed approximately fifteen feet during the time of the shooting, and came to a stop near the front driver's side of Deputy Johnson's patrol car. Deputy Johnson said he was not sure about others shooting at the same time, but believed he saw Deputy Bitolas shoot at Suspect Berry. All the shooting stopped once Suspect Berry's car came to a stop. Deputy Johnson said he ran to the passenger side of Suspect Berry's car and noticed Suspect Berry was slumped over toward the passenger seat, and was no longer a threat.

Deputy Johnson said during the initial struggle with Suspect Berry, he injured his fingers when he pulled on the loose handcuff, attempting to remove Suspect Berry from the vehicle. He also stated he suffered pain in his legs where Suspect Berry had kicked him.

IAB interview of Involved Deputy Solorio

The force used by Deputy Solorio during this incident was one activation of the TASER, and he fired three rounds with his pistol.

Deputy Solorio told investigators he responded to a family disturbance, and possible insane person call, at the location. He said he realized the handling unit (Deputy Johnson), had not acknowledged the call immediately, and was possibly delayed at the station. Deputy Solorio stated he coordinated with other responding units and advised he had a TASER with him. He designated an area south of the location to meet and further coordinate the response, prior to driving to the location. Prior to his arrival, he heard on the radio that other units had arrived and responded to the location. Deputy Solorio said when he arrived he observed three units parked on the street in front of the location, and the suspect's BMW was also on the street with its front bumper in contact with the front bumper of Deputy [redacted] patrol car. He noticed Deputies Johnson and Bitolas were standing at the open driver's door of Suspect Berry's vehicle, and Deputy [redacted] was at the passenger door of the BMW. Deputy Solorio asked what had happened, and Deputy [redacted] informed him that Suspect Berry had rammed his patrol car. Deputy Solorio noticed Suspect Berry seated in the driver's seat of his vehicle, and had a single handcuff on his left wrist. Suspect Berry was struggling with Deputies Bitolas and Johnson, who were attempting to pull him out of the vehicle. Deputy Bitolas had a TASER in his hand and told Deputy Solorio to hold it so he could assist Deputy Johnson with pulling Suspect Berry out of the vehicle. Suspect Berry had a firm hold on the steering wheel, and had his left foot in the street, attempting to push himself further into his car. Deputy Solorio said multiple commands were given to Suspect Berry to stop fighting and exit the car; however, Suspect Berry did not comply and cussed at the deputies.

Deputy Solorio saw Suspect Berry kick Deputy Bitolas, then Suspect Berry kicked his driver's door, causing the door to strike Deputy Solorio several times on the right arm as Deputy Solorio stood near the left front tire/door area of the vehicle. Deputy Solorio told his partners to OC spray Suspect Berry, and observed either Deputy Bitolas' or Deputy Johnson's hand reach through the open door and spray Suspect Berry in the face with OC. After being sprayed with OC, Suspect Berry appeared to become more angered as he continued to struggle with the deputies. Deputy Solorio said Deputy [redacted] entered the passenger door of the Suspect Berry's vehicle and may have sprayed Suspect Berry with OC. Deputy Solorio saw Deputy [redacted] attempt to dislodge Suspect Berry's grip on the steering wheel by striking Suspect Berry's knuckles twice with a flashlight. Suspect Berry did not release his grip on the steering wheel. Deputy Solorio noticed Suspect Berry's pupils were dilated, and because he was not effected by flashlight strikes to his knuckles, or to being sprayed with OC spray, Deputy Solorio formed the opinion Suspect Berry was under the influence of something. He feared they were in for a bigger fight than expected based on Suspect Berry's demeanor and tolerance to pain.

Deputy Solorio said he utilized either his TASER, or the TASER handed to him by Deputy Bitolas when he first arrived. Deputy Solorio reached in through the area between the door window and the windshield frame, and tased Suspect Berry in the torso. He was not sure if the TASER darts made contact because Suspect Berry continued to kick at them. At some point, Deputy Solorio lost hold of the TASER and dropped it. He was not sure if Suspect Berry kicked it out of his hands, or if he simply dropped it. Deputy Solorio heard Sergeant Jobling say to turn the car's engine off. Deputy Solorio said he could not see car keys, and was not sure how to shut the motor off. He did not want to reach into the vehicle because Suspect Berry may have attacked him. Deputy Bitolas handed a TASER cartridge to him, and he either picked up the dropped TASER, or he utilized his TASER with the plan to drive-stun Suspect Berry; however, he was unable to make contact because of Suspect Berry's violent kicks. Deputy Solorio saw Deputy Johnson strike Suspect Berry's shin two times with an expandable baton with such force, the impacts were audible. He heard Suspect Berry say, "Ow, that one actually hurt."

Deputy Solorio withdrew his baton, but realized he was unable to reach Suspect Berry because of the car door, so he did not use it. He noticed Deputy Oberle arrived at the open driver's door of the Suspect Berry's vehicle and heard him tell Suspect Berry to stop, and to exit the car. He said Deputy Oberle was not aware of all that had happened during the struggle with Suspect Berry, prior to Deputy Oberle arriving. Deputy Solorio heard the BMW's engine revving as the car lurched forward, but it could not push Deputy [redacted] patrol car out of the way. Deputy Solorio realized Suspect Berry was trying to move his car, so he yelled for Deputy Oberle to get out of the way. Deputies Bitolas and Johnson moved from their positions, and Deputy [redacted] got out of the BMW. Deputy Solorio said he moved toward the rear of Deputy Johnson's patrol car and saw Suspect Berry put his car in reverse, and back up at a high rate of speed. He said Deputy Oberle had no avenue of escape because Suspect Berry's driver's door struck the rear of Deputy Johnson's car and hyperextended forward, trapping Deputy Oberle between the two cars.

Deputy Solorio saw Deputy Oberle put his hands on the cars and attempt to lift himself up to avoid being crushed by Suspect Berry's vehicle. Deputy Solorio heard metal crushing and glass breaking from the impact of the BMW striking Deputy Johnson's car as Suspect Berry backed his vehicle at an angle toward the front yard of the location. Deputy Solorio said he could not see Deputy Oberle's legs because they were pinned between the two cars as Suspect Berry reversed approximately six to ten feet. He saw Deputy Oberle trapped and believed Suspect Berry was going to kill him with his car. Deputy Solorio said his only option to save Deputy Oberle from being killed, or having his legs torn off, was to shoot Suspect Berry. He drew his firearm and fired three rapid shots through the windshield at Suspect Berry's chest. Deputy Solorio realized other deputies were firing at the same time because he observed numerous rounds hit the windshield and hood of Suspect Berry's vehicle. Deputy Solorio said he saw Deputies [redacted] and Johnson shooting at the same time as he did.

Deputy Solorio said he stopped shooting because he saw Deputy Oberle fall to the ground and end up near his line of fire. He did not want to take a chance of hitting Deputy Oberle. Deputy Solorio grabbed hold Deputy Oberle's shirt collar and assisted him to his feet and helped him cross the street. He believed if Suspect Berry was able to drive forward, Deputy Oberle would not have had time to get out of the way, and would have been run over by the BMW, so he helped Deputy Oberle get away from Suspect Berry's vehicle. Deputy Solorio said he immediately advised, via his radio, that deputies had been involved in a shooting, and requested paramedics to respond to treat Deputy Oberle and Suspect Berry.

IAB interview of Involved Deputy Bitolas

The force used by Deputy Bitolas during this incident was resisted handcuffing, OC spray, three sap strikes to Suspect Berry's legs and thigh area, and he shot five times with his pistol at Suspect Berry.

Deputy Bitolas told investigators he parked his car south of where Deputy [redacted] parked in the street. He got out of his car and observed Suspect Berry drive off the front yard and curb, and collide into the front end of Deputy [redacted] patrol car. Deputy Bitolas was initially confused about what he just saw. He believed Suspect Berry intentionally tried to run Deputy [redacted] down since Deputy [redacted] had just exited his car.

Deputy Bitolas said he went to the driver's door of Suspect Berry's car, along with Deputy Johnson, to assist with removing Suspect Berry from the vehicle. He said they ordered Suspect Berry to exit; however, Suspect Berry refused and held onto the steering wheel of his car while revving the engine and trying to push the patrol car backwards. Deputy Bitolas said they pulled on Suspect Berry's left arm to remove him from the car, but were unable to gain control of him. The two of them were able to place a single handcuff on Suspect Berry's left wrist. Suspect Berry kicked Deputy Bitolas in the chest several times, and would not release his grip on the steering wheel. Deputy Bitolas sprayed Suspect Berry in the face with OC, saturating Suspect Berry's face; however, the OC had no noticeable effect, other than to cause Suspect Berry to kick more violently at them. Deputy Bitolas grabbed Suspect Berry's legs to stop him from kicking them, but he lost his grip several times. He saw Deputy [redacted] enter the passenger's side door of Suspect Berry's car and either punch, or strike Suspect Berry with a flashlight in his upper body, to stop Suspect Berry from kicking them.

Deputy Bitolas saw Deputy Solorio next to him so he handed Deputy Solorio his TASER and told Deputy Solorio to tase Suspect Berry. Deputy Bitolas did not utilize the TASER himself because he was too close to Suspect Berry and he was still trying to control Suspect Berry's legs. He said Deputy Solorio tased Suspect Berry. Deputy Bitolas said he saw the TASER barbs strike Suspect Berry and he heard the TASER cycle; however, the TASER did not have the desired effect, it only seemed to enrage Suspect Berry more. Suspect Berry pulled the barbs out while Deputy Solorio told the other deputies the TASER was not working.

Deputy Bitolas gave Deputy Solorio another cartridge for the TASER and said to tase Suspect Berry again. Deputy Solorio tased Suspect Berry a second time; however, Suspect Berry pulled the TASER out of Solorio's hands when Solorio reached through the open door and the windshield frame of the car. The TASER fell into Suspect Berry's lap while the TASER was still cycling. Deputy Bitolas reached in to grab the TASER and felt a shock from it, which confirmed the TASER was functioning normally, but it did not appear to affect Suspect Berry. Deputy Bitolas then dropped the TASER onto the ground.

Deputy Bitolas said he was able to get ahold of both of Suspect Berry's legs with one arm wrapped around them. With his right hand, he struck Suspect Berry's thigh three times with his sap before Suspect Berry kicked the sap out of his hands. The strikes appeared to have no effect on Suspect Berry as he continued to kick at them. Deputy Johnson let go of the open handcuff attached to Suspect Berry that he was holding, while trying to pull Suspect Berry out of the car. Deputy Bitolas said he was able to get a hold of both of Suspect Berry's legs again and saw Deputy Johnson strike Suspect Berry's shin once with his expandable baton. He said the strike was so hard that blood had pooled on Suspect Berry's shin and was visible on his pants. He heard Suspect Berry say, "Ouch, that hurt." Suspect Berry then became even more enraged as he pulled his legs free again. Suspect Berry manipulated the gear shift of his car so Deputy Bitolas yelled for his partners to get out of the way because he believed Suspect Berry was going to shift the car into reverse. Deputy Johnson was on his right side and Deputy Oberle was on his left side at the open driver's door. Once he realized Suspect Berry was going to place the vehicle in reverse, Deputy Bitolas knew he was in a dangerous position and would be caught by the door of Suspect Berry's car if he drove in reverse. Deputy Bitolas jumped out of the way and ran around the rear of Deputy Johnson's parked patrol car. He continued around the car until he was at the right front fender of the patrol car where he saw Suspect Berry starting to drive in reverse.

Deputy Bitolas said he heard glass breaking and metal scraping from Suspect Berry's car striking Deputy Johnson's car. He saw Deputy Oberle jump up in the air between the two cars, and heard him grunt in pain. He knew Deputy Oberle was being crushed between the cars and saw him spin around before he fell to the ground and out of view. Suspect Berry back his vehicle a short distance then stopped. Deputy Bitolas could not see Deputy Oberle, but heard him grunt in pain on the other side of the patrol car. He believed Deputy Oberle's legs had been crushed which prevented him from getting up. Deputy Bitolas said he was approximately twelve feet away from Suspect Berry and could clearly see him because the BMW's driver's door had been hyperextended out of the way. He noticed Suspect Berry was looking down at the gear shift again and trying to manipulate it back into drive. He feared if Suspect Berry drove forward, he would run over and possibly kill Deputy Oberle, who had not been able to get up off the ground. Deputy Bitolas said his only option to save his partner's life was to shoot Suspect Berry to incapacitate him before he could drive forward.

Deputy Bitolas relied on his training and fired five times in a controlled rapid succession at Suspect Berry. He saw Suspect Berry slump over toward the passenger seat and stop moving. Deputy Bitolas said he and a fellow deputy made a tactical approach to asses Suspect Berry, and to provide medical attention for him.

Suspect Statements

None

Miscellaneous

The firearms utilized during this incident were collected by Homicide detectives and examined by Scientific Services Bureau personnel. Each weapon was found to be a Department issued firearm and functioned within normal specifications. Only Department issued ammunition was utilized during this incident.